

Section II (Remarks)**Acknowledgement of Allowability of Claims 35, 38, and 40, and Rewriting of Same in Independent Form**

In the July 13, 2005 Office Action, the Examiner objected to claims 35, 38, and 40 as depending from a rejected base claim, but stated that claims 35, 38, and 40 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response, claims 35, 38 and 40 have been rewritten in independent form, and same are now in condition for allowance.

Amendment of Claims 30 and 41

Claim 30 has been amended herein to recite the claimed method as including, *inter alia*, the steps of "transmitting infrared radiation through the gas for infrared radiation adsorbance by a desired component of said gas" and "detecting the infrared radiation transmitted through the gas with a thermopile detector."

Claim 41 has been correspondingly amended, with respect to recital of the steps of transmission of infrared radiation through the material for infrared radiation absorbance by a desired component of the material and detection of the infrared radiation transmitted through the material with a thermopile detector.

Claims 31-34, 36, 37, and 39 depend directly or indirectly from amended claim 30, and thus also require the infrared radiation transmission and thermopile detection steps recited in claim 30. In like manner, claims 42-45 depend from claim 41, and therefore also require the infrared radiation transmission and thermopile detection steps recited in claim 41.

As thus amended, all claims 30-34, 36-37, 39 and 41-45 are patentably demarcated over the Lammerink reference teachings, as discussed more fully hereinafter.

Rejection of Claims 30-34, 36, 37, 39 and 41-45, and Traversal Thereof

In the July 13, 2005 Office Action, the examiner has rejected claims 30-34, 36, 37, 39 and 41-45 under 35 USC 102(e) as anticipated by Lammerink U.S. Patent 6,370,950 ("Lammerink").

Such rejection is traversed, in application to claims 30-34, 36, 37, 39 and 41-45 as amended herein. Reconsideration of the patentability of such claims is requested, in light of the following remarks.

Patentable Distinction of Claims 30-34, 36, 37, 39 and 41-45 Over Lammerink

Claims 30-34, 36, 37, 39 and 41-45 have been rejected as anticipated by Lammerink.

“Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration” (*W.L. Gore & Assocs. v. Garlock*, 721, F.2d 1540, 220 USPQ 303 at 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)) with “disclosure of each and every element of the claimed invention, arranged as in the claim” (*Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added)).

Lammerink describes a device for measuring a physical parameter of a flowing medium, e.g., flow rate, density or specific heat, which includes two measuring spaced-apart objects, each including a heating element and a temperature sensor, in which the measured temperature difference is kept, by means of a control loop, to a value of zero, in which the electric power to each of the measuring objects is determined during at least one heating cycle, and the ratio of electric power determined from each of the two measuring objects is employed for calculating the physical parameter.

Lammerink contains no teaching or suggestion of the steps of “transmitting infrared radiation through the gas for infrared radiation adsorbance by a desired component of said gas” and “detecting the infrared radiation transmitted through the gas with a thermopile detector,” as required by claims 30-34, 36, 37, and 39, or of the steps of “transmitting infrared radiation through the material for infrared radiation adsorbance by a desired component of said material” and “detecting the infrared radiation transmitted through the material with a thermopile detector,” as required by claims 41-45.

Since Lammerink fails to disclose or in any way suggest these various limitations of amended claims 30-34, 36-37, 39 and 41-45, Lammerink does not anticipate these claims, and withdrawal of the rejection of these claims is respectfully requested.

Fee payable for rewritten claims 35, 38 and 40

The rewriting of claims 35, 38 in 40 in independent form increases the number of independent claims by two, beyond the number for which payment previously has been made. Accordingly, an added claims fee of \$400 is payable, and such payment is enclosed in the form of a Credit Card Authorization Form authorizing charging of such amount to the credit card identified in such Form.

Additionally, authorization hereby is given for charging of any additional fee or amount properly payable in connection with the filing and entry of this Amendment, to Deposit Account No. 08-3284 of Intellectual Property/Technology Law.

CONCLUSION

As amended herein, all claims 30-45 are in form and condition for allowance. Favorable action therefore is requested.

If any issues remain outstanding, incident to the allowance of this application, the examiner is requested to contact the undersigned attorney at the (919) 419-9350 to discuss their resolution, in order that this application may be passed to issue at an early date.

Respectfully submitted,



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